

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

DENIED

MOOT

Case Discharged on
October 27, 2010,
document number 21

Nov 03, 2010



BARRY S. SCHERMER
United States Bankruptcy Judge

In Re:)
Rhettney Pierce, *Debtor*) **Waive 30 Days**
U.S. Bank, N.A., by US Bank Home Mortgage, loan)
servicing agent for *Creditor*) **Case No. 10-10858-399**
vs.) **Chapter: 7**
Rhettney Pierce, *Debtor*) **MOTION FOR RELIEF FROM**
and) **STAY**
Rice P. Burns, Jr., *Trustee*) **Filed By: U.S. Bank, N.A.**
) **Original Hearing Date:**
) **November 2, 2010**
) **Original Hearing Time:**
) **1:45 PM**

Steven L. Crouch, #2903
Daniel A. West, #98415
6363 College Blvd., Ste 100
Overland Park, KS 66211

MOTION FOR RELIEF FROM THE AUTOMATIC STAY
COMBINED WITH NOTICE OF HEARING

WARNING: ANY RESPONSE OR OBJECTION MUST BE FILED WITH THE COURT BY OCTOBER 26, 2010 (SEE L.B.R. 9013-1B). A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE. THE HEARING TO BE HELD ON THE DATE AND TIME ABOVE BEFORE THE HONORABLE JUDGE BARRY S. SCHERMER, IN THE UNITED STATES BANKRUPTCY COURT, EASTERN DISTRICT OF MISSOURI, 555 S. INDEPENDENCE ST., 3A, CAPE GIRARDEAU, MO.

U.S. Bank, N.A., its successors or assigns, ("Creditor"), and in support of its motion, states as follows:

1. Creditor files this motion under Rules 4001 and 9014, Rules of Bankruptcy Procedure. On July 6, 2010, the Debtor filed a Petition for Adjustment of Debts under Chapter 7 of the Bankruptcy Code wherein Creditor was listed as a secured creditor as to real property of the Debtor.

2. Jurisdiction is invoked in the District Court under 28 U.S.C. §1334(a) and 28 U.S.C. §1471(a) and jurisdiction is proper in this Court pursuant to 28 U.S.C. §1408(1) and §157(b)(2)(G).

3. Rhettney Pierce ("Debtor") resides at 2681 Bittersweet Rd., Lake Ozark, MO 65049.

4. Rice P. Burns, Jr. is the Trustee duly appointed by law ("Trustee").

5. On September 21, 2007, the Debtors executed a promissory note (the "Note") in the principal sum of \$80,100.00.

6. Contemporaneously with the execution of the Note, a Deed of Trust was executed to secure repayment of the Note.

7. The Deed of Trust was filed for record with the Office of the Register of Deeds of Camden County, Missouri, on September 23, 2007, Document No. 0271-0150. A copy of the Deed of Trust is available upon request and incorporated by referenced as though fully set forth herein and identified as Exhibit "A".

8. The Deed of Trust encumbers the property legally described as follows:

All of Unit No. 3 of Sun-West Condominiums Plat No. 1, a condominium in Camden County, Missouri, according to the Plat thereof on file and of record at Plat Book 21, Pages 52, 53, 54, 55 and 71, Camden County Recorder's Office, subject to by-laws of Sun-West Condominiums filed of record at Book 233, Page 965 and enabling declaration establishing a plan for condominium ownership filed of record at Book 233, Page 964, Camden County Recorder's Office and all amendments thereto, commonly known as 2681 Bittersweet Road Unit #3, Lake Ozark, MO 65049 (the "Property")

9. Creditor is entitled to enforce the Note and Deed of Trust.

10. Creditor does not have an independent estimate of the value of the property, but notes that the Debtor has scheduled the value of the property at \$85,000.00.

11. The Debtor has not claimed the Property as exempt under 11 U.S.C. §522 and intends to surrender the Property.

12. The approximate balance due on the Promissory Note is in the amount of \$76,784.36, an exact payoff is available upon request of an appropriate party.

13. The Debtor has failed to pay the payments due on the promissory note held by the Creditor. The following amounts are now due and owing:

DESCRIPTION	AMOUNT
(4) Late Payments @ \$652.44 (06/10 -09/10)	\$2,609.76
Accrued Late Charges	\$82.98
Property Inspections	\$82.86
MFR Filing Fee	\$150.00
MFR Attorney Fees	\$500.00
Total	\$3,425.60

14. These amounts due and owing are in addition to any amounts that have come due after the filing of this Motion pursuant to the terms of the Promissory Note and Security Instrument.

15. The Debtor has failed to cure the delinquency and the estate lacks sufficient assets from which the delinquency can be cured. The Debtor has materially defaulted with respect to payment of Creditor's secured claim and has caused unreasonable delay, which is prejudicial to this creditor.

16. To remedy this prejudicial delay to creditor, an Order for Relief from the Automatic Stay should be granted that is effective immediately without a stay of enforcement pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3).

WHEREFORE, Creditor, its successors or assigns, prays that it be granted Relief from the Automatic Stay of 11 U.S.C. §362 to enforce its lien granted in the Mortgage and for such other and further relief, as the Court deems proper.

SOUTH & ASSOCIATES, P.C.

/s/Daniel A. West

Steven L. Crouch, (MBE #37783; EDMO #2903; KSFD #70244)

Daniel A. West (MBE #48812; EDMO #98415; KSFD #70587)

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ATTORNEYS FOR CREDITOR

CERTIFICATE OF MAILING/SERVICE

I certify that a true copy of the Attached Pleading was served either electronically or via first class mail on September 13, 2010 upon the following parties:

Rhettney Pierce

2681 Bittersweet Rd.

Lake Ozark, MO 65049

DEBTOR

Mark J Lanzotti

Lanzotti & Rau, LLC

354 S. Silver Springs Rd., Ste. A

Cape Girardeau, MO 63703

ATTORNEY FOR DEBTOR

Rice P. Burns, Jr.

733 N. Main

P.O. Box 67

Sikeston, MO 63801

TRUSTEE

/s/Daniel A. West

Steven L. Crouch

Daniel A. West

ATTORNEYS FOR CREDITOR